



U.S. Department of Justice

Civil Division, Tobacco Litigation Team

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July 3, 2002

By Facsimile

Thomas J. Frederick, Esquire
Winston & Strawn
35 West Wacker Drive
Chicago, Illinois 60601-9703

Re: United States v. Philip Morris Inc. et al., Civil No. 99-CV-2496 (GK) (D.D.C.)

Dear Mr. Frederick:

We write regarding your recent disclosure that Philip Morris Incorporated ("Philip Morris") has destroyed an undisclosed number of e-mails in violation of the Court's Document Preservation Order. See ¶ Order #1, ¶7.

First, we are troubled by the way in which this matter was handled. The United States first learned of Philip Morris' destruction of documents when it was copied on a June 19 e-mail to the Special Master. That e-mail requested that the Special Master submit your letter -- which accompanied the e-mail -- to Judge Kessler. Why did Philip Morris not inform counsel for the United States immediately upon learning of the document destruction before notifying the Court? As the destroyed documents are presumptively relevant to this case, and thus should have been produced to the United States absent their destruction, Philip Morris should have immediately notified the United States so that the parties could confer about the matter, assess the potential impact of the destruction on the United States' discovery efforts and determine whether a mutually acceptable course of action was possible. This is particularly true given that Philip Morris' disclosure -- regardless of when Philip Morris' counsel actually discovered the violation -- occurred less than two weeks before the long-established deadline for fact discovery.

In order to determine an appropriate response to Philip Morris' admission that it has destroyed documents relevant to this case, the United States requires additional information from Philip Morris immediately. Your letter leaves many obvious questions unanswered. Below we have listed some initial questions to which we request immediate answers. We note that these questions should have been apparent to Philip Morris and it should have already provided such pertinent information directly to the United States.

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- (1) On what date did a Philip Morris employee, or a representative or counsel of Philip Morris, first discover that files were destroyed? What, if any, immediate measures were taken?
- (2) How did it "come to the attention of Philip Morris that some e-mails of some employees had been inadvertently deleted without having been printed and retained?"
- (3) Who are the employees whose files were destroyed? Please provide a complete list with names and job titles.
- (4) What are the facts that suggest that "it now appears some employees did not fully comply with that 'print and retain' policy?" Has Philip Morris determined which other employees are similarly situated?
- (5) What is Philip Morris' basis for believing that "it is likely that some of this e-mail was subject to the Document Preservation Order."
- (6) What was the existing preservation policy that was violated? Please provide a copy of the specific documents reflecting the policy that was violated.
- (7) What were the specific instructions that Philip Morris counsel allegedly provided employees regarding the preservation policy? Please provide a copy of those instructions.
- (8) What are the facts that form the basis for Philip Morris' assumption that "copies of e-mail not retained by one employee often have been retained by another employee?" List all employees who would have copies of such destroyed materials?
- (9) What are the facts that form the basis for Philip Morris' belief that "any failure to retain any relevant e-mail was entirely inadvertent and that no employee intended to circumvent either company policy or the Court's order?"
- (10) What are the facts that form the basis for your understanding that "some employees failed either to print the e-mail or migrate the e-mail to 'safe' locations on their computers before it was deleted?"
- (11) What, if any, recovery effort of the e-mails are planned, attempted or underway?
- (12) If the United States seeks to depose a Philip Morris employee about the destruction of the documents referenced in your letter, who are the persons most knowledgeable?
- (13) Does this destruction of documents violate existing preservation orders in any other cases? If so, please provide copies of all relevant correspondence notifying the Court(s) and/or other parties.

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We anticipate that the answers to these questions will raise more questions. Please respond to these questions in writing no later than Wednesday, July 10. In addition, we ask that counsel for Philip Morris be prepared to meet with us to discuss the issues raised by Philip Morris' destruction of documents no later than the week of July 15.

Very truly yours,



Renée Brooker
Assistant Director
Tobacco Litigation Team

cc: Leonard A. Feiwus, Esq.